IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 51

DUPUY H. ANDERSON and ACIE J. BELTON,

Appellants,

—v.—

WADE O. MARTIN, JR.,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants, Dupuy H. Anderson and Acie J. Belton, appeal from the order of the United States District Court for the Eastern District of Louisiana entered on October 3, 1962 denying a permanent injunction against the enforcement of a statute of the State of Louisiana which requires the designation of the race of candidates for elective office on nominating papers and ballots. They submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Citation to Opinion Below

The opinion of the United States District Court for the Eastern District of Louisiana (R. 53) denying a preliminary injunction was rendered on June 29, 1962 and is re-

ported at 206 F. Supp. 700. The dissenting opinion of Circuit Judge Wisdom (R. 50) is reported at 206 F. Supp. 705. These opinions are reprinted in the appendix hereto at pp. 13 and 21, respectively. No further opinion was rendered with the final order, entered Oct. 3, 1962 (R. 70).

Jurisdiction

This suit was initiated in the United States District Court for the Eastern District of Louisiana to enjoin the enforcement of La. R. S. §18:1174.1 (Act No. 538 of the 1960 Regular Session of the Louisiana Legislature). It was brought pursuant to 28 U. S. C. §§1331, 1343(3) and 42 U. S. C. §§1971a, 1981, 1983, and was heard by a three judge court convened under 28 U. S. C. §§2281 and 2284.

The order of the District Court denying the prayer for issuance of a permanent injunction is dated September 28, 1962 and the time of its entry is October 3, 1962 (R. 70; see appendix *infra*, p. 24). Notice of Appeal to this Court was filed in the District Court on October 25, 1961 (R. 79). Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C. §1253.

The following cases sustain this Court's jurisdiction on direct appeal: *Florida Lime and Avocado Growers* v. *Jacobsen*, 362 U. S. 73; *Kessler* v. *Department of Public Safety*, 369 U. S. 153.

Statute Involved

La. R. S. §18:1174.1 enacted as Act No. 538 of the 1960 Regular Session of the Louisiana Legislature. It is printed in volume 2 of the Louisiana Revised Statutes, 1960 Supplement, p. 385. The statute provides as follows:

Designation of race of candidates on paper and ballots—A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein whether such candidate is of the Caucasian race, the Negro race or other specified race.

B. Chairman of party committees, party executive committees, presidents of boards of supervisors of election or any person or persons required by law to certify to the Secretary of State the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.

C. On the ballots to be used in any state or local primary, general or special election the Secretary of State shall cause to be printed within parentheses () beside the name of each candidate, the race of the candidate, whether Caucasian, Negro, or other specified race, which information shall be obtained from the documents described in Sub-section A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots.

Question Presented

Whether La. R. S. §18:1174.1 (Act No. 538 of the 1960 Regular Session of the Louisiana Legislature) which provides for the designation of the race of candidates for elec-

tive office on nomination papers and ballots in all primary, general or special elections violates the equal protection and due process clauses of the Fourteenth Amendment, and the Fifteenth Amendment to the Constitution of the United States.

Statement of the Case

Appellants, Negro citizens of the United States and the State of Louisiana, and residents of the Parish of East Baton Rouge, Louisiana, were candidates for nomination to the office of School Board member of the Parish of East Baton Rouge in the Democratic Party primary election held on July 28, 1962. They filed a complaint in the District Court for the Eastern District of Louisiana on June 8, 1962 to enjoin the enforcement of Act No. 538 of the 1960 Regular Session of the Louisiana Legislature, naming as defendant the Secretary of State of the State of Louisiana who, by the terms of the statute, was charged with its enforcement (R. 1). Asserting that the statute violated the First, Fourteenth, and Fifteenth Amendments to the Constitution of the United States, plaintiffs prayed for preliminary and permanent injunctions and a temporary restraining order. They also asked that a three-judge court be convened pursuant to 28 U. S. C. §§2281, 2284.

On June 11, 1962 the Motion for Temporary Restraining Order was denied by District Judge West, and thereafter a three-judge court was convened (R. 13; 18).

The cause was heard on June 26, 1962 before the three-judge court. At the hearing an Answer was filed admitting many facts alleged in the complaint (R. 31). Defendant also moved to dismiss for lack of jurisdiction (R. 28). The court recessed to consider its jurisdiction and having concluded that the case was properly before it reconvened to hear the merits (R. 54).

In open court the parties stipulated that the defendant was a ministerial officer required to follow R. S. §18:1174.1 and that he caused the ballots to be printed in accordance with the provisions of the statute (R. 76-77). After argument, the motion for preliminary injunction was denied by the court on June 26, 1962 with Judge Wisdom dissenting (R. 25). Thereafter, on June 29, 1962 the majority and dissenting opinions were filed.

On September 19, 1962 District Judge West denied plaintiffs' Motion for Leave to File a proposed Amended or Supplemental Complaint which alleged that the aforementioned primary election was held on July 28, 1962 and that in accordance with the statute in issue the race of appellant was noted beside their names on the ballot (R. 66); that appellant Anderson was defeated in the primary and appellant Belton was defeated in a subsequent run-off election held September 1, 1962 (R. 66); that appellants' unsuccessful candidacies were substantially influenced by the operation and enforcement of the statute (R. 66); that appellants "intend to be candidates in the next duly constituted democratic primary election for nomination as members of the East Baton Rouge Parish School Board and further that they intend to seek other public office" in the parish and state in the future (R. 66).

On September 28, 1962, the District Court signed, and on October 3, 1962, entered a final order denying the prayer for permanent injunctive relief (R. 70). This order incorporated by reference the opinion of June 29, 1962, and again Judge Wisdom noted his dissent.

Notice of Appeal was filed in the District Court on October 25, 1962 (R. 79).

The Question Presented Is Substantial

La. R. S. §18:1174.1 requires all candidates for elective office in every election in Louisiana to state on every application for or notification or declaration of candidacy whether they are "of the Caucasian race, the Negro race, or other specified race." It requires the Secretary of State to print the racial description so obtained in parentheses beside the name of every candidate on the ballots used "in any state or local, primary, general or special election." Plaintiffs, both candidates for office in a primary election as well as being qualified voters, sued to enjoin the Secretary of State from enforcing this law by making the required racial designation on the ballot.

The majority of the court below, District Judges West and Ellis, held the statute valid and enforceable as not repugnant to the Fourteenth or Fifteenth Amendments to the Constitution of the United States. The majority opinion by Judge West undertakes to distinguish the Louisiana statute in suit from a similar Oklahoma law which was held unconstitutional in *McDonald* v. *Key*, 224 F. 2d 608 (10th Cir. 1955), cert. denied 350 U. S. 895.[1]

The opinion below held that while the Oklahoma law required that the race of candidates be designated on ballots only if they were "other than of the white race" and thus treated Negroes differently from other candidates, the Louisiana statute was sufficiently different to be valid since it required that candidates of all races be so designated on the ballot. The majority also held that a candidate has no right not to have his race disclosed and that the court was "not disposed to create a shield against the

[1] This opinion reversed a District Court opinion upholding the Oklahoma statute at 125 F. Supp. 775 (W. D. Okla. 1954).

brightest light of public examination of candidates for public office" (R. 57).

Circuit Judge Wisdom adopted a contrary view and agreed with appellants' contention that *McDonald* v. *Key*, *supra*, could not be distinguished in principle. As he observed, and as petitioners submit is altogether obvious, "the omission of any racial designation on . . . [an Oklahoma] ballot amounted to the candidate identifying himself as a white man just as surely as a Negro candidate would identify himself by the word 'Negro' after his name. The result was essentially the same result intended to be accomplished by the Louisiana statute" (R. 51).[2]

Indeed, the trial court in *McDonald* v. *Key*, 125 F. Supp. 775, 777 (W. D. Okla. 1954), relied on this asserted equality in treatment in upholding the Oklahoma statute using reasoning very similar to that of the court below in the present case. The Oklahoma District Court said that placing the word "Negro" on the ballot was "merely descriptive and properly serves to inform the electors of the fact that the candidate is of African descent," and added that it "likewise serves to inform the voters that the other candidates are members of the 'white race'" (*Id.* at 777).

While the Tenth Circuit's decision in *McDonald* v. *Key* found a denial in equal treatment with respect to Negroes who run for office in that their race was placed on the ballot while the race of other candidates was not (224 F. 2d at 610), it is submitted that the opinion below conflicts in principle with the decision in *McDonald* v. *Key*, *supra*, and that this conflict between a Court of Appeals and a statutory three-judge District Court demonstrates that the question involved here is substantial.

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[2] Under the Oklahoma Constitution the "white race" included all persons except Negroes. See *McDonald* v. *Key*, 224 F. 2d 608, 609 (10th Cir. 1955).

It is submitted that Judge Wisdom's dissent in this case effectively states the appropriate constitutional principles which should decide the issue and demonstrates that the result reached in *McDonald* v. *Key, supra,* is the correct one.

The Louisiana law's requirement that a candidate state his race in order to gain a place on the ballot and that the Secretary of State print each candidate's race in parentheses beside his name on the ballot infringes the liberty of citizens and introduces a racial classification into the electoral process while serving no legitimate end of the State. Neither the State nor the court below has asserted any legitimate governmental purpose to be served by the required disclosure and designation. To be sure, it is said that this designation informs the electorate, but no one has said what state objective this accomplishes. A state might rationally require that a candidate disclose and that the voters be told of his qualifications for office, or indeed, perhaps, even of his views on issues relating to the office sought. But, racial designations have no rational relationship to candidates' qualifications, and the State has no business placing its power and prestige behind a system of racial identification of citizens. Electors may often cast their ballots on the basis of the candidate's race, religion, national origin, or other factors not related to his qualifications for office, but it is no legitimate object of the state to feed or stimulate such prejudices in the elections it conducts.

Indeed, racial classifications so rarely have any rational connection with any legitimate objects of government as to be "immediately suspect" necessitating "the most rigid scrutiny." *Korematsu* v. *United States*, 323 U. S. 214, 216. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people

whose institutions are founded upon the doctrine of equality." *Hirabayashi* v. *United States*, 320 U. S. 81, 100.

Beyond the absence of any valid state purpose in compelling candidates to declare their race and in putting a racial stamp on them, thus requiring them to run for office as Negroes or as whites, this statute must be viewed in the context of Louisiana's well-known policy of racial discrimination against Negroes. This Court's attention has been repeatedly drawn to various manifestations of Louisiana's officially declared policy of racial separation all designed to brand Negroes as inferiors to be set apart from whites by the State.[3]

Having legally branded Negroes as an inferior race by a host of laws and practices applied throughout community life, Louisiana now, by R. S. §18:1174.1 insures that the public will identify as such any individual member of the state-designated "inferior race" who seeks public office. In the context of this state policy, it is plainly no answer to say that caucasians are also required to make similar self-identifications and to be racially designated on the ballots. To be labelled as a member of the dominant majority racial group is quite a different thing than to be labelled as a member of a legally disadvantaged minority race. As Judge Wisdom wrote in *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 655 (E. D. La. 1961), aff'd 368 U. S. 515:

> To speak of this law as operating equally is to equate equal protection with the equality Anatole France spoke of: "The law in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

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[3] See the discussion of Louisiana's policy in Mr. Justice Douglas's concurring opinion in *Garner* v. *Louisiana*, 368 U. S. 157, 181.

This Court rejected a parallel argument saying that "equal protection of the laws is not achieved through indiscriminate imposition of inequalities." *Shelley* v. *Kraemer*, 334 U. S. 1, 22.

The majority of the Court that decided *Plessy* v. *Ferguson*, 163 U. S. 537, 551, subscribed to the view that segregation laws, such as the Louisiana railroad segregation laws and the similar laws that remain in that State, did not stamp Negroes as inferior, but rather, that it was Negroes themselves who placed that construction upon them. *Brown* v. *Board of Education*, 347 U. S. 483, rejected this notion holding that segregation laws did, indeed, have their intended result, namely, to disadvantage Negroes, the racial minority set apart by the State. The *Brown* case vindicated the first Justice Harlan's dissent in *Plessy*, *supra* at 554, where he wrote:

> In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights . . . But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved.

Mr. Justice Harlan further expounded his view that the post-Civil War amendments to the Constitution "removed the race line from our governmental systems" (*Id.* at 555), stating in often quoted language that:

> But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as

man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved (at 559).

As Judge Wisdom's opinion indicated, racial classifications are particularly inappropriate in the electoral process. "If there is one area above all others where the Constitution is color-blind, it is the area of state action with respect to the ballot and the voting booth" (206 F. Supp. at 705). Cf. *Nixon* v. *Herndon*, 273 U. S. 536, 541. The purpose of the Fifteenth Amendment to "forbid all discriminations between white citizens and citizens of color in respect to their right to vote" (*United States* v. *Reese*, 92 U. S. 214, 226) and to proscribe denials or abridgements of the right on the basis of race is patent.

Although this particular Louisiana law does not operate directly to disfranchise Negroes or affect their entitlement to vote and participate in the system of self-government, it does affect their votes by injecting racism into the electoral process in a manner calculated to stimulate the same racial animosities otherwise encouraged by Louisiana's segregation laws. Louisiana thus encourages racial discrimination by voters. Such an indirect effort to limit Negro participation in government accomplishes the same objective as an abridgement or denial of the franchise on the basis of race. That this result will flow from the racially motivated choices of voters does not make it any less repugnant to the Constitution since governmental action under R. S. 18:1174.1 initiates the chain of events resulting in the discrimination, and this interplay of governmental and private action makes it more likely to occur. Cf. *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449, 463.

Finally, the fact that this statute might operate to benefit a Negro candidate and against a white candidate in a community, unlike East Baton Rouge where plaintiffs re-

side, which had a Negro electoral majority, is not relevant. For, it is submitted that the State has a duty under the Fifteenth Amendment and the Fourteenth Amendment to be "color-blind" and not to act so as to encourage racial discrimination in the electoral process against any racial group.

CONCLUSION

It is respectfully prayed that the Court should review the judgment of the District Court and enter a judgment reversing the decision below.

Respectfully submitted,

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